

**Aramark Sports & Entertainment Services, Inc. and  
Independent Hospitality Workers' Union. Petitioner.** Case 4–RC–19244

October 30, 1998

**ORDER AFFIRMING DISMISSAL**

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's administrative dismissal of the instant petition.<sup>1</sup> The request for review raises no substantial issues warranting reversal of the Regional Director's action.

In affirming the Regional Director, we note that she found that the employees sought by the Petitioner are covered by a collective-bargaining agreement between the Intervenor (Hotel Employees and Restaurant Employees Union, Local 274, AFL-CIO) and the Employer, effective from October 1, 1996 through September 30, 1999. Consequently, the Regional Director found that this agreement constitutes a bar to the subsequently filed petition.

The Petitioner asserts that the collective-bargaining agreement at issue is a sham, and does not embody the terms that had been ratified by the employees. The Petitioner, however, has failed to produce any evidence supporting its claims.

The Petitioner filed its petition seeking representation of employees of the Employer on October 6, 1997. Prior to that date, the Intervenor and the Employer signed a memorandum of agreement, containing a definite beginning and end date for a contract, and several terms and conditions of employment.<sup>2</sup> The terms of this memorandum are incorporated in the collective-bargaining agreement virtually verbatim.<sup>3</sup>

The Petitioner also claims that the contract it was supplied on September 22, 1997, failed to embody the terms that had been ratified by the employees in October 1996, such as wage increases, improvements to health benefits, and an agreement that the Employer would not employ nonunit employees for various functions prior to exhausting the list of unit employees.

We find no merit to the Petitioner's arguments. In order to support its claims, the Petitioner's request for review should have been accompanied by documentary

evidence previously submitted to the Regional Director raising serious doubts as to the Regional Director's factual findings. See Section 102.71(a)(3) of the Board's Rules and Regulations. Indeed, no such evidence was ever submitted to the Regional Director. There are no affidavit averments nor is there substantive documentary evidence to support the contention that the contract was a sham. Nor did the Petitioner submit any affidavits from employees stating what employees were asked to ratify, or any documentation that a prior agreement existed between the Intervenor and the Employer that did not contain the provisions ratified by the members.<sup>4</sup>

Based on all of the above, we conclude that the Regional Director's dismissal of the petition was proper. Accordingly, the dismissal is affirmed.

**APPENDIX**

**REGIONAL DIRECTOR'S DISMISSAL LETTER**

The above-captioned case petitioning for an investigation and certification of representative under Section 9(c) of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, I find that further proceedings are unwarranted. The investigation disclosed that employees in the unit sought by the Petitioner are covered by a collective-bargaining agreement between Hotel Employees and Restaurant Employees Union, Local 274, AFL-CIO, and the Employer, which is effective from October 1, 1996 to September 30, 1999. It is well settled that a written agreement signed by the parties which contains substantial terms and conditions of employment constitutes a bar to a subsequently filed petition. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); see also *Gaylord Broadcasting Co.*, 250 NLRB 198 (1980). Even if the collective-bargaining agreement differs in some respects from the understanding that was reached during negotiations in 1996, such differences are not sufficient to remove the signed agreement as a bar. *St. Mary's Hospital & Medical Center*, 317 NLRB 89, 90 (1995). With respect to your contention that the collective-bargaining agreement was not ratified by the unit employees, the Board has held that where, as here, "the contract itself contains no express provisions for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar." *Appalachian Shale*, supra at 1163. Accordingly, I am dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing a request therefor with the National Labor Relations Board, addressed to the Executive Secretary, Na-

<sup>1</sup> Relevant portions of the Regional Director's dismissal letter are attached as an appendix.

<sup>2</sup> The Petitioner makes no argument that the contract does not cover substantial terms and conditions of employment and is thus insufficient to bar the petition as a matter of law.

<sup>3</sup> The investigation disclosed the existence of two cover letters, one from Garden State Benefits Services addressed to the Intervenor acknowledging receipt of the collective-bargaining agreement, and the other from the Intervenor addressed to the Welfare and Pension Funds with the collective-bargaining agreement attached. Both cover letters are dated August 1997, also prior to the filing of the petition.

<sup>4</sup> The question of employee ratification raised by the Employer is not germane. The Board has held that without a condition precedent, evidence of prior ratification is not material. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958); *Gate City Optical Co.*, 175 NLRB 1059, 1061 (1969). There is no such condition present.

tional Labor Relations Board, Washington, D.C. 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, D. C., by the close of business on Octo-

ber 31, 1997. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.